

ESTTA Tracking number: **ESTTA456762**

Filing date: **02/15/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Sizzler USA Franchise, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	6101 W. Centinela Avenue, Suite 300 Culver City, CA 90230 UNITED STATES		

Attorney information	Rod S. Berman, Esq. Jeffer Mangels Butler & Mitchell LLP 1900 Avenue of the Stars, 7th Floor Los Angeles, CA 90067 UNITED STATES trademarkdocket@jmbm.com Phone:310-203-8080
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Applicant Information

Application No	85376771	Publication date	02/07/2012
Opposition Filing Date	02/15/2012	Opposition Period Ends	03/08/2012
Applicant	Nice Bowtie LLC #279 3439 NE Sandy Blvd Portland, OR 97232 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. First Use: 2010/06/15 First Use In Commerce: 2010/06/15
All goods and services in the class are opposed, namely: Restaurant services

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	882633	Application Date	04/22/1969
Registration Date	12/16/1969	Foreign Priority Date	NONE
Word Mark	SIZZLER		


Design Mark	SIZZLER
Description of Mark	NONE
Goods/Services	Class U100 (International Class 042). First use: First Use: 1957/01/26 First Use In Commerce: 1963/09/02 RESTAURANT SERVICES

U.S. Registration No.	1384530	Application Date	07/26/1982
Registration Date	02/25/1986	Foreign Priority Date	NONE
Word Mark	SIZZLER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1957/01/26 First Use In Commerce: 1963/09/02 PREPARED MENU ITEM, NAMELY TOAST FOR CONSUMPTION ON AND OFF THE PREMISES		

U.S. Registration No.	1462078	Application Date	09/02/1980
Registration Date	10/20/1987	Foreign Priority Date	NONE
Word Mark	SIZZLER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1957/01/26 First Use In Commerce: 1963/09/02 PREPARED MENU ITEMS NAMELY, STEAKS, AND DINNERS CONSISTING OF STEAK, POTATOES AND TOAST FOR CONSUMPTION ON AND OFF THE PREMISES		

U.S. Registration No.	2294706	Application Date	12/18/1997
Registration Date	11/23/1999	Foreign Priority Date	NONE
Word Mark	SIZZLER		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1997/05/11 First Use In Commerce: 1997/05/11 RESTAURANT SERVICES

U.S. Registration No.	3056206	Application Date	07/18/2003
Registration Date	01/31/2006	Foreign Priority Date	NONE
Word Mark	SIZZLER SS		
Design Mark			
Description of Mark	The mark consists of SIZZLER SS.		
Goods/Services	<p>Class 016. First use: First Use: 2005/11/03 First Use In Commerce: 2005/11/03 STATIONERY; WRITING PAPER; COUPONS; NEWSLETTERS IN THE FIELD OF FOOD AND RESTAURANTS</p> <p>Class 029. First use: First Use: 2005/11/03 First Use In Commerce: 2005/11/03 PREPARED ENTREES CONSISTING PRIMARILY OF MEAT, POULTRY AND/OR VEGETABLES; VEGETABLE AND FRUIT SALADS; AND EXCLUDING SAUSAGES</p> <p>Class 030. First use: First Use: 2005/11/03 First Use In Commerce: 2005/11/03 PREPARED ENTREES CONSISTING PRIMARILY OF PASTA AND/OR RICE; SPICES; SAUCES; BAKERY GOODS; BREADS</p>		

Attachments	72325145#TMSN.gif (1 page)(bytes) 75407367#TMSN.gif (1 page)(bytes) 78276261#TMSN.jpeg (1 page)(bytes) 9099 Notice of Opposition - Nice Bowtie LLC - SIZZLE PIE.pdf (5 pages)(26945 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/S/ ROD S. BERMAN
Name	Rod S. Berman, Esq.
Date	02/15/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<p>SIZZLER USA FRANCHISE, INC.,</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>NICE BOWTIE, LLC,</p> <p style="text-align:center">Applicant.</p>	<p>Opposition No.: _____</p> <p>Application Serial No.: 85/376,771</p> <p>Mark: SIZZLE PIE</p> <p>Published for Opposition: February 7, 2012</p> <p>Atty. Ref. No.: 59243-9099</p>
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Opposer Sizzler USA Franchise, Inc., a Delaware corporation, ("Opposer"), having an address of 6101 W. Centinela Avenue, Suite 300, Culver City, California 90230, believes that it will be damaged by the registration on the Principal Register of the mark that is the subject of Federal Trademark Application Serial No. 85/376,771 (the "Application"), allegedly owned by Nice Bowtie, LLC ("Applicant"), in connection with services in International Class 43 as identified in the Application, and Opposer hereby opposes registration thereof.

1. As grounds for this Opposition, it is alleged that Opposer is the owner of record of Registration No. 882,633, issued on December 16, 1969, for the mark SIZZLER, as well as of the business and goodwill connected therewith. Opposer has been using the SIZZLER mark in commerce in connection with "restaurant services" in International Class 42, as identified in the aforementioned registration. Opposer's registration is unrevoked and incontestable.

2. Opposer is the owner of record of Registration No. 1,384,530, issued on February 25, 1986, for the mark SIZZLER, as well as the business and goodwill connected therewith. Opposer has been using the SIZZLER mark in commerce in connection with "prepared menu item, namely toast, for consumption on and off the premises" in International Class 30, as identified in the aforementioned registration. Opposer's registration is unrevoked and incontestable.

3. Opposer is the owner of record of Registration No. 1,462,078, issued on October 20, 1987, for the mark SIZZLER, as well as the business and goodwill connected therewith. Opposer has been using the SIZZLER mark in commerce in connection with "prepared menu items, namely, steaks, and dinners consisting of steak, potatoes and toast for consumption on and off the premises" in International Class 29, as identified in the aforementioned registration. Opposer's registration is unrevoked and incontestable.

4. Opposer is the owner of record of Registration No. 2,294,706, issued on November 11, 1999, for the mark SIZZLER & design, as well as the business and goodwill connected therewith. Opposer has been using the SIZZLER & design mark in commerce in connection with "restaurant services" in International Class 42, as identified in the aforementioned registration. Opposer's registration is unrevoked and incontestable.

5. Opposer is the owner of record of Registration No. 3,056,206, issued on January 31, 2006, for the mark SIZZLER SS & Design, as well as the business and goodwill connected therewith. Opposer has been using the SIZZLER SS & design mark in commerce in connection with "stationary, writing paper, coupons, newsletters in the field of food and restaurants" in International Class 16, "prepared entrees consisting primarily of meat, poultry and/or vegetables; vegetable and fruit salads, and excluding sausages" in International Class 29, and "prepared

entrees consisting primarily of pasta and/or rice, spices, sauces, bakery goods, breads" in International Class 30, as identified in the aforementioned registration. Opposer's registration is unrevoked and uncanceled.

6. Opposer has been using its SIZZLER mark in connection restaurant services since at least as early as September 1963.

7. Opposer's SIZZLER marks described in Paragraphs 1-5 above, and as reflected in Opposer's U.S. Reg. Nos. 882,633, 1,384,530, 1,462,078, 2,294,706, and 3,056,206 are collectively referred to herein as "Opposer's Mark."

8. On information and belief, Applicant is an Oregon limited liability company with its principal place of business located at 3439 NE Sandy Blvd., #279, Portland, Oregon 97232.

9. On information and belief, Applicant is the owner of record of trademark application Serial No. 85/376,771 for registration of the mark SIZZLE PIE for use in connection with "restaurant services" in International Class 43 ("Applicant's Services").

10. Since long prior to June 15, 2010, the date of first use claimed in Applicant's application, Opposer has widely advertised and promoted Opposer's Mark in connection with its goods and services with the result that Opposer's Mark has become well known and associated with Opposer in the United States. Because of these efforts, and by virtue of the excellence and success of the goods and services offered and provided by Opposer under Opposer's Mark, Opposer has built up a valuable reputation and tremendous goodwill in Opposer's Mark belonging exclusively to Opposer.

11. Applicant's Mark so resembles Opposer's Mark as to be likely, when used in connection with Applicant's Services, as to cause confusion, or mistake, or deception. Applicant's Mark, therefore, creates a confusingly similar commercial impression. Thus,

consumers will likely believe that Applicant's use of Applicant's Mark in connection with Applicant's Services is in some way associated or connected with or sponsored, authorized, or warranted by Opposer. Any objection or fault with Applicant's Services offered in connection with Applicant's Mark would reflect upon and seriously injure Opposer's reputation in connection with services offered under Opposer's Mark.

12. Opposer's Mark is a famous mark as defined by U.S.C.A. §1125(c)(1) and was famous at least as early as July 20, 2011, the filing date of Applicant's application.

13. Applicant's Mark so resembles Opposer's Mark as to be likely, when used in connection with Applicant's Services, as to cause dilution of Opposer's Mark.

14. If Applicant is granted the registration herein opposed, Applicant would thereby obtain at least a prima facie exclusive right to use of Applicant's Mark in connection with the goods identified in Application Serial No. 85/376,771. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, in accordance with Section 13 of the Trademark Act (15 U.S.C. § 1063), Opposer prays that this Opposition be sustained and that Application Serial No. 85/376,771 be refused.

Respectfully submitted,

Dated: February 15, 2012

/S/ ROD S. BERMAN

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Attorneys for Opposer Sizzler USA Franchise, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that on **February 15, 2012**, a copy of the foregoing **NOTICE OF OPPOSITION** has been sent by first class mail, postage prepaid to Applicant at the correspondence addresses of record in the Patent and Trademark Office:

John E. Russell
Allmark Trademark
2089 Avy Avenue
Menlo Park CA 94025



Esther Silverman